

**NOT TO BE PUBLISHED**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(San Joaquin)**

----

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS MICHAEL MILLAN,

Defendant and Appellant.

C068346

(Super. Ct. No. LF011493A)

Defendant Luis Michael Millan entered a negotiated plea of guilty to attempted murder and street terrorism and admitted he personally used a firearm in the commission of the attempted murder. The trial court sentenced him to state prison in accordance with the plea.

Defendant's ensuing appeal is subject to the principles of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *People v. Kelly* (2006) 40 Cal.4th 106, 110. In accordance with the latter, we will provide a summary of the offense and the proceedings in the trial court.

In the late evening hours of August 2, 2009, a Lodi police officer on patrol heard the sounds of squealing automobile tires followed by multiple gunshots.<sup>1</sup> At an intersection, he saw a car making a left turn. The driver yelled to the officer, "They are shooting at me," and he continued onward. The officer looked toward the center island and saw two males, one of whom was holding a revolver. The gunman looked at the officer and fled behind a place of business. After announcing that he would deploy a police dog, the officer detained the gunman, subsequently identified as defendant. When finally detained in the early morning hours of August 3, 2009, defendant was not in possession of a gun. Later, a gun was found in the parking lot of the business where defendant had fled. Four bullet holes were found in the car. The driver told the officer that he had approached defendant after mistaking him for one of the driver's friends. Words were exchanged, defendant produced a revolver, the driver accelerated, and shots were fired. The driver was taken to defendant's location. Upon viewing him, the driver identified defendant as the person who had fired a gun at him. A Lodi police detective, designated at the preliminary examination as a gang expert, opined that defendant was a member of the Norteño criminal street gang.

---

<sup>1</sup> Because the matter was resolved by plea and defendant waived referral to the probation department, our statement of facts is taken from the transcript of the preliminary examination.

Defendant pleaded guilty to attempted murder (Pen. Code, §§ 187, subd. (a), 664, subd. (a)—count 1)<sup>2</sup> and street terrorism (§ 186.22, subd. (a)—count 8) and admitted an allegation that he personally used a firearm (§ 12022.53, subd. (b)) in the commission of count 1. In exchange, several related counts and enhancing allegations were dismissed.

Defendant was sentenced to state prison for a stipulated term of 15 years, consisting of the low term of five years on count 1, 10 years consecutive for the enhancement, and three years concurrent on count 8. He was awarded 613 days of custody credit and 92 days of conduct credit. (§ 2933.1.) Defendant was ordered to pay a \$200 restitution fine (§ 1202.4), a \$200 restitution fine suspended unless parole is revoked (§ 1202.45), and an \$80 court security fee (§ 1465.8, subd. (a)(1)).

Defendant appeals. We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

---

<sup>2</sup> Undesignated statutory references are to the Penal Code in effect at the time of defendant's April 8, 2011 state prison commitment.

Our review of the record shows that defendant was in custody from the date of the offense, August 3, 2009, through the date of sentencing, April 8, 2011, a period of 614 days. Thus, defendant is entitled to one additional day of custody credit. The extra day does not entitle him to additional conduct credit under section 2933.1.

The relevant 2010 amendment to section 2933 does not entitle defendant to additional conduct credit because he was committed for a serious felony. (§ 1192.7, subd. (c)(1), (39); former § 2933, subd. (e)(3) [as amended by Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010].)

The record also shows that the trial court did not orally pronounce the mandatory court facilities assessment of \$60. (Gov. Code, § 70373.) We shall modify the judgment to include this assessment.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

### **DISPOSITION**

The judgment is modified to award defendant 614 days of custody credit and impose a \$60 court facilities assessment. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment that

reflects these modifications and forward a certified copy to the  
Department of Corrections and Rehabilitation.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, BLEASE, Acting P. J.

\_\_\_\_\_, MAURO, J.